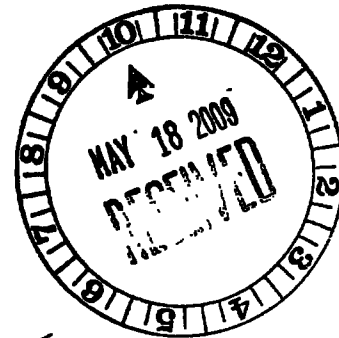


LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

May 15, 2009



225/38

By UPS overnight mail
(Monday delivery)

Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

ENTERED
Office of Proceedings
MAY 19 2009
Part of
Public Record

Re: ¹⁰³⁵ Docket No. AB-1439, Lake County, Oregon -- Adverse Discontinuance of Rail
Service -- Modoc Railway and Land Company, LLC and Modoc Northern
Railroad Company

Dear Ms. Quinlan:

Enclosed please find an original and 10 copies of Petition For Partial Waiver Of
Abandonment Regulations And For Exemptions, for filing with the Board in the above
referenced matter.

No filing fee is payable because the Petitioner is a governmental agency.

FILED
MAY 18 2009
**SURFACE
TRANSPORTATION BOARD**

Very truly yours,

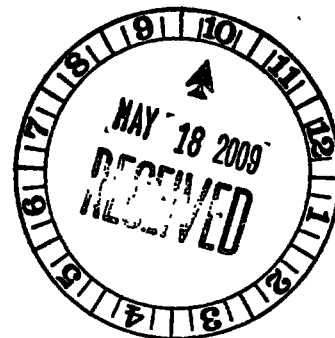
Tom McFarland

Thomas F. McFarland
Attorney for Petitioner

TMcF kl enc wp8 0\1366\trstb1

FEE RECEIVED
MAY 18 2009
**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD



LAKE COUNTY, OREGON -- ADVERSE)
DISCONTINUANCE OF RAIL SERVICE) DOCKET NO.
-- MODOC RAILWAY AND LAND) ~~AB-1439~~
COMPANY, LLC AND MODOC) **AB-1035**
NORTHERN RAILROAD COMPANY)

225138

PETITION FOR PARTIAL WAIVER
OF ABANDONMENT REGULATIONS
AND FOR EXEMPTIONS

FEE RECEIVED
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TRANSPORTATION BOARD

ENTERED
Office of Proceedings

MAY 19 2009

Part of
Public Record

FILED

MAY 18 2009

**SURFACE
TRANSPORTATION BOARD**

LAKE COUNTY, OREGON
513 Center Street
Lakeview, Oregon 97630

Petitioner

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BAILEY & YARMO, LLP
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Bend, OR 97701
(541) 317-9000

THOMAS F. McFARLAND
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Attorneys for Petitioner

DATE FILED: May 18, 2009

BEFORE THE
SURFACE TRANSPORTATION BOARD

| | | |
|--------------------------------|---|--------------------|
| LAKE COUNTY, OREGON -- ADVERSE |) | |
| DISCONTINUANCE OF RAIL SERVICE |) | DOCKET NO. |
| -- MODOC RAILWAY AND LAND |) | AB-1439 |
| COMPANY, LLC AND MODOC |) | AB-1035 |
| NORTHERN RAILROAD COMPANY |) | |

**PETITION FOR PARTIAL WAIVER
OF ABANDONMENT REGULATIONS
AND FOR EXEMPTIONS**

Pursuant to 49 C.F.R. § 1152.24(e)(5) and 49 U.S.C. § 10502(a), LAKE COUNTY, OREGON (the "County") hereby seeks partial waiver of regulations governing railroad abandonments at 49 C.F.R. § 1152, Subpart C, and exemptions from the offer-of-financial-assistance (OFA) provisions of 49 U.S.C. § 10904 and from the public use provisions of 49 U.S.C. § 10905. That waiver and those exemptions are sought in conjunction with an application that the County intends to file for adverse discontinuance of rail service provided by Modoc Railway and Land Company, LLC (MR&L) and Modoc Northern Railroad Company (MNRR) over a 55.41-mile rail line between Milepost 456.89 at or near Alturas, California and Milepost 512.30 at or near Lakeview, Oregon (the Alturas-Lakeview Line or the Line).

The Alturas-Lakeview Line is shaded in yellow on a map that is attached to this Petition as Appendix 1. Also shown on that map is a rail line between Alturas, California and Klamath Falls, Oregon (Alturas-Klamath Falls Line). Until recently, MNRR leased that rail line from Union Pacific Railroad Company (UP). UP has terminated that lease for cause.

HISTORY AND CURRENT STATUS OF THE ALTURAS-LAKEVIEW LINE

The Alturas-Lakeview Line was constructed and operated for many years by Southern Pacific Transportation Company (SP). In 1985, SP was authorized to abandon the Line. *See* Docket No. AB-12 (Sub-No. 84), *Southern Pac. Transp. Co. -- Aband. -- in Modoc County, CA and Lake County, OR*, decision served Oct. 20, 1985.

The County acquired the Line from SP after its abandonment. Through its Railroad Commission, the County contracted with The Great Western Railway Company (GWR) to operate the Line pursuant to a modified certificate of public convenience and necessity. (Modified Certificate). *See* Finance Docket No. 30777, *The Great Western Railway Co. -- Modified Rail Certificate*, notice served Feb. 26, 1986.

The County terminated rail operations by GWR, effective November 1, 1997. Thereafter, the County commenced operation of the Line through its Lake County Railroad division (LCR) pursuant to a Modified Certificate. *See* Finance Docket No. 33581, *Lake County Railroad -- Modified Rail Certificate*, notice served April 24, 1998.

In 2007, the County leased the Line to MR&L and MNRR.^{1/} *See* Finance Docket No. 34995, *Modoc Railway and Land Company, LLC -- Acq. & Oper. Exempt. -- in Lake County, OR*, notice served Feb. 28, 2007, and Finance Docket No. 34996, *Modoc Northern Railroad Co. -- Acq. & Oper. Exempt. -- in Lake County, OR*, notice served Feb. 28, 2007.

In 2009, MR&L and MNRR materially breached their lease agreement with the County. After that breach was not cured within the notice period required by that lease, the County duly

^{1/} MNRR is believed to be the railroad operating division of MR&L.

terminated that lease, effective May 7, 2009. The County has resumed operation of the Line pursuant to its Modified Certificate, with LRY d.b.a. Lake Railway (Lake Ry.) acting as the County's agent for the provision of rail service on the Line.

It is necessary for the County to file an application for adverse discontinuance of rail service by MR&L and MNRR because those entities operated the Line pursuant to authority granted by the Board rather than pursuant to a Modified Certificate, and because MR&L and MNRR have not undertaken to file a notice of exemption in their own behalf for discontinuance of their rail service over the Line.

This Petition for Partial Waiver of Board abandonment regulations is appropriate because the County does not have information necessary to comply with a number of those regulations, and because other of such regulations are not pertinent in the circumstances.

WAIVERS REQUESTED

As the Board and its predecessor, the Interstate Commerce Commission ("ICC"), have consistently found, much of the information that the Board's regulations require in an abandonment proceeding is largely inapplicable or irrelevant to an application for adverse discontinuance or abandonment. *Seminole Gulf Railway, L.P. -- Adverse Abandonment -- in Lee County, FL*, STB Docket No. AB-400 (Sub-No. 4), served June 9, 2004 ("*Seminole Gulf*") (citing, *Napa Valley Wine Train, Inc. -- Adverse Abandonment -- in Napa Valley, CA*, STB Docket No. AB-582, served Mar. 30, 2001 ("*Napa Valley*")); *Chelsea Property Owners Abandonment -- Portion of Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY*, Docket No. AB-167 (Sub-No. 1094), served July 19, 1989. Consistent with that precedent, the County requests waivers from the following provisions:

A. **Notice of Intent.** The County intends to file and publish a notice of the proposed adverse discontinuance, as required by 49 C.F.R. § 1152.21. The County believes, however, that the form of the notice prescribed in § 1152.21 is inappropriate for use in this proceeding. Therefore, the County requests a waiver of the prescribed form for the notice, and proposes instead to use the form of notice set forth in Appendix 2. Such relief is consistent with the Board's decisions in *Seminole Gulf* and in *Norfolk Southern Railway Company -- Adverse Abandonment -- St. Joseph County, IN*, STB Docket No. AB-290 (Sub-No. 286), served Oct. 26, 2006 ("*St. Joseph County*").

The County requests a waiver of 49 C.F.R. § 1152.20(a)(2)(xii), which requires service of the notice upon the headquarters of all duly certified labor organizations that represent employees on the affected rail lines. It is believed that railroad employees of M&RL-MNRR were not represented by a labor organization.

B. **System Diagram Map.** The County seeks a waiver of all requirements in 49 C.F.R. §§ 1152.10 to 1152.14, and 49 C.F.R. § 1152.24(e)(1). These provisions require a carrier to maintain, file and publish a System Diagram Map ("SDM"), and requires a line to appear on the SDM for at least 60 days before an abandonment application can be filed for the specific line. Waiver of this requirement is appropriate because the County does not propose to discontinue its own rail service. Furthermore, waiver of this requirement is consistent with the Board's decision in *St. Joseph County*. See, also, *Salt Lake City Corp. -- Adverse Abandonment -- in Salt Lake City, UT*, STB Docket No. AB-33 (Sub-No. 183) (served Oct. 5, 2001) ("*Salt Lake*").

C. **Contents of the Abandonment Application.** The County requests a waiver of the requirements of 49 C.F.R. § 1152.22(a)(5), which requires inclusion of the rail line on a

carrier's SDM, the date upon which the lines were first listed on the SDM, and a copy of the line descriptions which accompanies the carrier's SDM. Waiver of these requirements is appropriate because the County, as a third party applicant, does not have access to the current SDM of MR&L-MNRR, if any, and it does not possess, nor is it able to obtain this information. In recognition of these facts, the Board has granted waivers of these requirements in prior adverse abandonment proceedings. *See Yakima Interurban Lines Assos. -- Adverse Abandonment -- in Yakima County, WA*, STB Docket No. AB-600 (served Feb. 6, 2004). *Cf. St. Joseph County.*

The County requests a waiver of the requirements of 49 C.F.R. § 1152.22(b)-(d), which requires a description of the present physical condition of the line, estimated deferred maintenance and rehabilitation costs, a description of service performed on the lines during the prior year, and a computation of the revenues attributable and avoidable costs for the lines to be abandoned. As a third party applicant, the County is unable to provide information. Waiver of these requirements is consistent with prior Board decisions in adverse abandonment cases. *St. Joseph County*, at 5. *See, also, Seminole Gulf and East St. Louis Jct. R.R. Co. -- Adverse Abandonment -- in St. Clair County, IL*, STB Docket No. AB-838, served June 30, 2003 ("*St. Clair County*").

In view of the waiver requests contained herein, the County further requests that the form of the draft Federal Register notice, as required by 49 C.F.R. § 1152.22(i), be waived. The County proposes instead to utilize the form of draft Federal Register notice set forth in Appendix 3.

D. Notice of Consummation. The County requests a waiver of the abandonment consummation notice requirement in 49 C.F.R. § 1152.24(f) and the one-year authorization limit

in § 1152.29(e)(2). As the Board has held in prior adverse abandonment proceedings, these waivers are not appropriate because the applicant does not have control over consummation. *See Salt Lake and Napa Valley.*

E. Environmental and Historic Regulations. The County seeks waiver of the Board's regulations requiring environmental and historic reporting in this matter. Alternatively, the County requests clarification that such regulations do not apply to the County's application because the Rail Line will continue to be operated after discontinuance of the rail service of MR&L-MNRR (i.e., the County, through Lake Ry., will continue rail operations on the Line). Moreover, if the County's application for adverse discontinuance were to be granted, Lake Ry. will file a notice of exemption to lease and operate the Rail Line.

EXEMPTIONS REQUESTED

Public Use, Trails, and OFA Conditions. The County seeks a waiver of the provisions for offers of financial assistance ("OFA"), public use procedures, and interim trail use and rail banking requirements of 49 C.F.R. §§ 1152.27 through 1152.29. In connection therewith, the County also seeks an exemption from the requirements of 49 U.S.C. §§ 10904 and 10905.

These procedures will serve no useful purpose and are not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101. If the Board were to grant the County's application for adverse discontinuance, the Board would withdraw its exclusive jurisdiction over the right-of-way to permit the application of state, local, or other federal laws because there is no overriding federal interest in interstate commerce. In this situation, the Board has noted that, absent an exemption, Sections 10904 and 10905 "could provide a vehicle for someone to invoke agency processes that the Board has determined are not necessary or appropriate." *St. Joseph*

County, at 6 (citing, Kansas City Puc. Ser. Frgt. Operations - Abandonment Exemption, 7 I.C.C.2d 216, 225 (1990)). See, also, St. Clair County.

WHEREFORE, the County respectfully requests that the Board grant the waivers and exemptions sought herein.

Respectfully submitted,

LAKE COUNTY, OREGON
513 Center Street
Lakeview, Oregon 97630

Petitioner

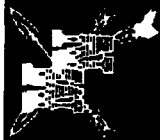


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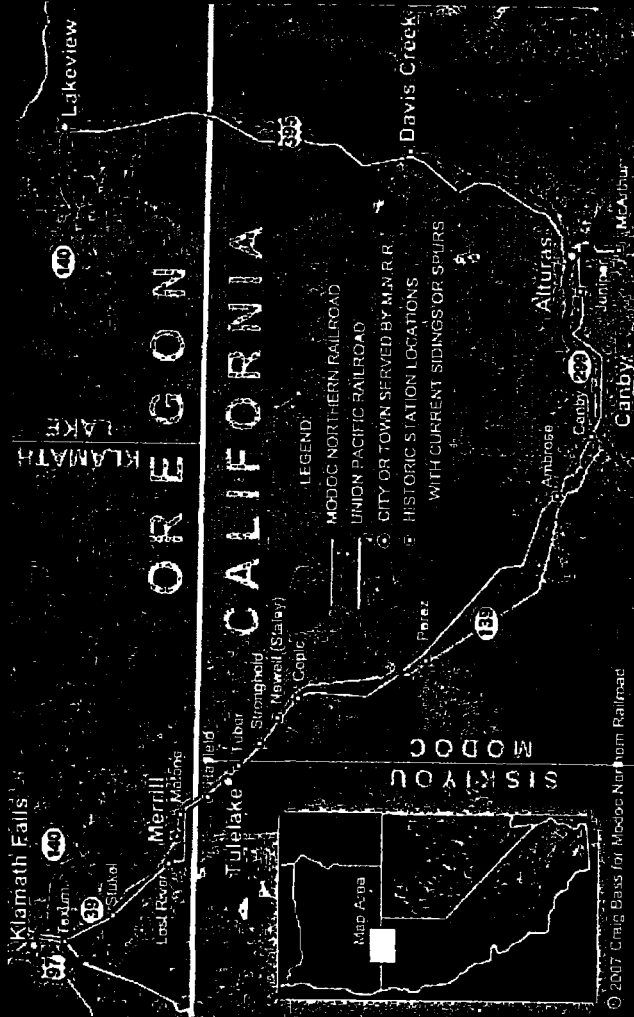
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mcfarland@aol.com

Attorneys for Petitioner

DATE FILED: May 18, 2009



Modoc Northern RAILROAD COMPANY



Draft Notice of Intent

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Docket No. AB-1439

**LAKE COUNTY, OREGON
-- ADVERSE DISCONTINUANCE OF RAIL SERVICE --
MODOC RAILWAY AND LAND COMPANY, LLC AND
MODOC NORTHERN RAILROAD COMPANY**

LAKE COUNTY, OREGON ("the County") (hereinafter "Applicant") gives notice that on or about _____, 2009, it intends to file with the Surface Transportation Board ("the Board"), Washington, D.C. 20423, an application seeking adverse discontinuance of the rail service of Modoc Railway and Land Company, LLC (MR&L) and Modoc Northern Railroad Company (MNRR) over a 55.41-mile rail line between Milepost 456.89 at or near Alturas, California and Milepost 512.30 at or near Lakeview, Oregon (Alturas-Lakeview Line). The affected railroad line is situated in U.S. Postal Zip Codes 96101, 96108, 97630 and 97635. The Line does not have stations. The reason for the proposed discontinuance is non-performance of material provisions of their lease with the County by MR&L-MNRR, resulting in termination of that lease.

APPENDIX 2

There are no documents in the County's possession that indicate that the Line contains federally granted rights-of-way. Any such documentation that might come into the County's possession will be made available promptly to those requesting it.

The application, when filed, can be viewed following its filing on the Board's webpage, www.stb.dot.gov, or a copy can be secured from the County's counsel, whose name and address appear below. The application will include the County's entire case for discontinuance. Any interested person, after the application is filed on or about _____, 2009, may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed discontinuance identifying it by the proceeding's docket number. These filings are due 45 days from the date of filing of the application. Persons who may oppose the discontinuance, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed discontinuance, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application. Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 395 E Street, S.W., Suite 100, Washington, DC 20024, together with a certificate of service attesting that copies of the comments or protests

APPENDIX 2

have been served on Applicant's counsel in this matter, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, phone 312-236-0204, fax 312-201-9695, mcfarland@aol.com. Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the discontinuance proceeding. Protests and comments will be considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interests may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after that application is filed.

Those parties filing protests to the proposed discontinuance should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. § 1152.25.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Service at (202) 245-0230 or refer to the text of the discontinuance regulations at 49 C.F.R. § 1152.1, *et seq.*

Draft Federal Register Notice

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423

STB Docket No. AB-1439

**LAKE COUNTY, OREGON
-- ADVERSE DISCONTINUANCE OF RAIL SERVICE --
MODOC RAILWAY AND LAND COMPANY, LLC AND
MODOC NORTHERN RAILROAD COMPANY**

LAKE COUNTY, OREGON (the County) gives notice that on _____, 2009, it filed with the Surface Transportation Board (“the Board”), Washington, D.C. 20423, an application seeking adverse discontinuance of rail service provided by Modoc Railway and Land Company, LLC and Modoc Northern Railroad Company over a 55.41-mile rail line between Milepost 456.89 at or near Alturas, California and Milepost 512.30 at or near Lakeview, Oregon (the Rail Line). The Rail Line is situated in U.S. Postal Zip Codes 96101, 96108, 97630 and 97635. The Rail Line does not have stations.

There is no documentation in the County’s possession that indicates that the line contains federally granted rights-of-way. Any such documentation relating to this discontinuance in the Applicant’s possession will be made available promptly to those requesting it. The application can be viewed on the Board’s webpage, www.stb.dot.gov, or a copy can be secured from Applicant’s counsel, whose name and address appear below. The Applicant’s entire case for discontinuance was filed with the application.

APPENDIX 3

Any interested person may file with the Surface Transportation Board its protest of, or written comments concerning, the proposed discontinuance identifying it by the proceeding's docket number. These filings are due 45 days after the application is filed. Persons who may oppose the discontinuance, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitted verified statements of witnesses containing detailed evidence, should file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address and business, (2) the protestant's interest in the proceeding, including their use of the line or the public interest represented, (3) the protestant's reasons for protesting or commenting on the proposed discontinuance, including their reliance on the involved service, and (4) any rebuttal of material submitted in the application.

Protests or comments need to be notarized or verified, and an unbound original and ten copies are required to be filed with the Secretary of the Board, at 395 E Street, S.W., Suite 100, Washington, DC 20024, together with a certificate of service attesting that copies of the comments or protests have been served on Applicant's counsel in this matter, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604-1112, phone 312-236-0204, fax 312-201-9695, mcfarland@aol.com. Written comments and protests must indicate the proceeding designation STB AB-1439.

Except as otherwise set forth in 49 C.F.R. § 1152, each document filed with the Board must be served on all parties to the discontinuance proceeding. Protests and comments will be

APPENDIX 3

considered by the Board in determining what disposition to make of the application. A commenting party or protestant may participate in the proceeding as its interest may appear.

If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary. Oral hearing requests must be filed with the Board no later than 10 days after that application is filed.

Those parties filing protests to the proposed discontinuance should be prepared to participate actively either in an oral hearing or through the submission of their entire opposition case in the form of verified statements and arguments at the time they file a protest. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. § 1152.25.

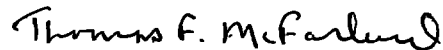
Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Service at (202) 245-0230 or refer to the text of the discontinuance regulations at 49 C.F.R. § 1152.1, *et seq.*

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2009, I served the foregoing document,
Petition For Partial Waiver Of Abandonment Regulations And For Exemptions, by UPS
overnight mail, upon representatives of MR&L-MNRR, as follows.

Dennis C. Farley, Esq.
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Salt Lake City, UT 84111

Mr. Don Blansett, President
Modoc Land and Railway, LLC
P.O. Box 819
Tulelake, CA 96134



Thomas F. McFarland